

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:02-CR-98-F-1

UNITED STATES OF AMERICA

vs.

CARL RAY MCNEIL, JR.,

Defendant.

ORDER

This matter is before the court *sua sponte*. On June 2, 2003, Defendant appeared before the court for sentencing, during which the court addressed all issues with the exception of the propriety of the imposition of a fine and restitution and entered judgment accordingly. [DE 32]. During a hearing on July 7, 2003, the United States Probation Office ("USPO") advised that imposition of restitution was proper. That same day, the court entered an amended judgment, ordering restitution in the amount of \$92,568.73 and no fine. [DE 34].

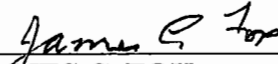
On December 14, 2016, Defendant appeared before the court for resentencing following his successful collateral attack of his judgment pursuant to 28 U.S.C. § 2255. In preparation for the hearing, both the USPO – in preparing its Resentencing Memo – and the court – in reviewing that document and the case file – mistakenly ignored the July 7, 2003 judgment. During the hearing, the parties advised they had no objections to the USPO's Resentencing Memorandum. [DE 87]. Accordingly, in announcing Defendant's sentence, the court relied on the revised sentencing recommendation of the USPO, which did not reflect the July 7, 2003 judgment imposing restitution and waiving the fine. The amended judgment [DE 92] repeated the court's error, imposing an \$18,000 fine and waiving restitution. Thus, the court finds amending the

amended judgment is necessary to correct a clerical error. *See* FED. R. CRIM. P. 36.

For the foregoing reasons, the Clerk of Court is DIRECTED to amend the Amended Judgment [DE 92] to reflect that restitution in the amount of \$92,568.73 and no fine.

SO ORDERED.

This the 12 day of January, 2017.



JAMES C. FOX
Senior United States District Judge